

REMARKS

Summary of Amendments

Upon entry of the foregoing amendments, claims 1-22 are cancelled and claims 23-49 are added, whereby claims 23-49 will be pending, with claims 23, 43 and 47 being independent claims.

Support for the new claims can be found throughout the present specification and the cancelled claims.

Regarding the weight percentages recited in, e.g., new claims 27-29 the Examiner's attention is directed particularly to the exemplary preparations disclosed in the present specification. In these preparations the highest total amount of Carbomer type I (corresponding to component (a) recited in the present claims) and Carbomer type II (corresponding to component (b) recited in the present claims) employed is 0.40 % by weight (see preparations (1) and (3)), the highest amount of Carbomer type I employed is 0.20 (see preparation (1)) and the highest amount of Carbomer type II employed is 0.25 % by weight (see preparation (3)).

Regarding the deletion of the density ranges for components (a) and (b) recited in the cancelled independent claims it is submitted that the dimensions recited in combination with these density ranges (Mg/kg and mg/kg) are not dimensions of density and it is not clear which other property (different from density) of components (a) and (b) may have been intended.

Applicants emphasize that the cancellation of claims 1-22 is without prejudice or disclaimer, and Applicants expressly reserve the right to prosecute these claims in one or more continuation and/or divisional applications.

Summary of Office Action

As an initial matter, Applicants note with appreciation that the Examiner has indicated consideration of the documents cited in the Information Disclosure Statements filed February 23, 2004 and April 3, 2006 by returning signed and initialed copies of the Forms PTO-1449 submitted therein.

Applicants also note with appreciation that the Examiner has acknowledged the claim for foreign priority and the receipt of certified copies of the priority documents.

Claims 20 and 22 are rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the enablement requirement.

Claim 18 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for allegedly failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

Claims 1-6 and 9-22 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,395,262 B1 to Favre et al. (hereafter “FAVRE”) in view of Cosmetic Additives (1991) (hereafter “CA”).

Claims 1-6 and 9-22 (Applicants assume that claims 7 and 8 were intended) are rejected under 35 U.S.C. § 103(a), as allegedly being unpatentable over FAVRE and CA and in further view of Cosmetic and Toiletry Formulations (1996, 2nd ed., Vol. 5) (hereafter “CTF”).

Response to Office Action

Reconsideration and withdrawal of the rejections of record are respectfully requested in view of the foregoing amendments and the following remarks.

Response to Rejection under 35 U.S.C. § 112, First Paragraph

Claims 20 and 22 are rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the enablement requirement. The rejection essentially alleges that one of ordinary skill in the art would be faced with undue experimentation in trying to find a preparation which is suitable for use in accordance with the rejected claims and that it is highly unpredictable that the composition as recited in independent claim 17 alone will treat oily skin, blemishes or acne or effectively make-up the skin.

Applicants respectfully traverse this rejection. Specifically, the present rejection appears to be based on the incorrect assumption that a preparation which consists of the components recited in claim 17 (generally corresponding to new claim 47) must be suitable for the applications recited in claims 20 and 22 (generally corresponding to new claims 48 and 49). However, claim 47 (and original claim 17) merely recites that the preparation comprises components (a) to (e) and thereby clearly indicates that the preparation may comprise additional components.

In other words, the preparation recited in claim 47 may, for example, merely serve as a base preparation which affords the advantageous properties described in the present specification and which is “enhanced” by incorporating therein one or more additives which are specifically selected to make the preparation suitable or better suitable for an intended application. Clearly, one of ordinary skill in the art would not be burdened with undue experimentation if he or she had to find additives for a preparation in accordance with claim 47 which will render the preparation suitable or better suitable for the treatment of oily, blemished or acne-affected skin or for use as a decorative cosmetic. A plethora of corresponding substances is known to those of skill in the art and can also be found in the scientific and medical literature.

Applicants submit that for at least all of the foregoing reasons the rejection under 35 U.S.C. §

112, first paragraph, is unwarranted and should be withdrawn, which action is respectfully requested.

Response to Rejection under 35 U.S.C. § 112, Second Paragraph

Claim 18 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for allegedly failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

Applicants note that the claims submitted herewith do not comprise any claim which corresponds to cancelled claim 18, thereby rendering this rejection moot. However, Applicants emphasize that the cancellation of claim 18 is not to be construed as Applicants' admission that the rejection of claim 18 is of any merit. As pointed out above, Applicants expressly reserve the right to prosecute claim 18 in one or more continuation and/or divisional applications.

Response to Rejections under 35 U.S.C. § 103(a)

Claims 1-6 and 9-22 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over FAVRE in view of CA. (Presumably) claims 7 and 8 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over FAVRE and CA and in further view of CTF. The rejection essentially alleges that Example 5 of FAVRE teaches an oil-in-water emulsion cosmetic formulation comprising components which meet the definition of components (a) to (c) as recited in the present claims and 0.1 % of a non-ionic surfactant, sorbitan monostearate instead of component (d). With respect to component (e) the rejection further alleges that FAVRE teaches the use of fatty alcohols as co-surfactants.

The rejection concedes that FAVRE does not teach the use of glyceryl stearate citrate and triceteareth-4 phosphate as emulsifiers but asserts that CA teaches that triceteareth-4 phosphate is an

oil-in-water emulsifier that aids fast absorption of the composition into skin and that CTF teaches the use of 1 % by weight of triceteareth-4 phosphate in an oil-in-water skin milk formulation comprising 0.15 % of Carbopol 980, thereby allegedly rendering it obvious to one of ordinary skill in the art to use triceteareth-4 phosphate in the composition of FAVRE in the recited amounts.

Applicants respectfully traverse these rejections. In this regard, it is pointed out that the emulsifiers recited in the present independent claims, i.e., glyceryl stearate citrate and triceteareth-4 phosphate, are anionic emulsifiers. In contrast, the (optional) emulsifiers taught by FAVRE are exclusively non-ionic emulsifiers. Specifically, FAVRE states at column 8, lines 53-67 (emphases added):

When the composition according to the invention is in the form of an emulsion, it may optionally also comprise a surfactant, although this is not necessary in order to obtain a stable and fine emulsion. However, the surfactant makes it possible to refine the emulsion obtained. As O/W surfactant, mention may be made in particular of (CTFA): cetearylglucoside, PEG-40 stearate, sorbitan tristearate, sorbitan stearate, polysorbate 60, the mixture sorbitan stearate/sucrose cocoate, the mixture of glyceryl stearate/PEG-100 stearate, PEG400, glyceryl stearate, the mixture of PEG-6/PEG-32/glycol stearate. As W/O surfactant, mention may be made in particular of the mixture polyglyceryl-4 isostearate/cetyltrimethicone copolyol/hexyl laurate and the mixture mineral oil/petrolatum/ozokerite/glyceryl oleate/lanolin alcohol.

Further, the *only* surfactant which is used in the Examples of FAVRE (sometimes in combination with a non-ionic co-surfactant, polyglyceryl decaoleate) is sorbitan monostearate 20EO, i.e., a non-ionic emulsifier as well (col. 11, lines 33-34 and col. 12, lines 34-37).

In view of the foregoing facts Applicants are unable to see what would have motivated one of ordinary skill in the art to replace the emulsifiers of FAVRE by an anionic emulsifier, let alone by glyceryl stearate citrate and/or triceteareth-4 phosphate.

It is noted that the Examiner also relies on the O/W skin milk disclosed in CTF, which skin milk comprises 1 % by weight of triceteareth-4 phosphate and 0.15 % by weight of Carbopol 980.

In this regard, Applicants point out that the skin milk of CTF and the composition of Example 5 of FAVRE have hardly anything in common. For example, 50 % of the oil phase of the composition of Example 5 of FAVRE is silicone-based, i.e., a hydroxylated silicone gum in a liquid silicone, whereas the milk of CTF does not appear to contain any silicone at all.

Moreover, the composition of Example 5 of FAVRE contains 0.6 % by weight of Carbopol 980, which is four times the amount of Carbopol 980 contained in the milk of CTF.

Further, the composition of Example 5 of FAVRE, but not the milk of CTF, contains Pemulen TR2 (which is the "core" of the compositions of FAVRE).

Even further, the composition of Example 5 of FAVRE comprises 0.1 % by weight of a non-ionic surfactant and no co-surfactant. In comparison, the milk of CTF comprises the 10-fold amount of an anionic surfactant, i.e., 1.00 % by weight of triceteareth-4 phosphate (and a considerable amount of co-surfactant, i.e., 3.50 % by weight of polyglyceryl-2 PEG-4 stearate).

Applicants submit that in view of the foregoing, one of ordinary skill in the art would not have any reason to expect that the non-ionic surfactant in the composition of Example 5 of FAVRE can be replaced by the triceteareth-4 phosphate used in the milk of CTF.

Applicants further point out that in view of the fact that all of the surfactants mentioned in FAVRE are non-ionic there is no reason for one of ordinary skill in the art to assume that the (exclusively) non-ionic co-emulsifiers mentioned in the first paragraph in column 9 of FAVRE and in particular, fatty alcohols can be used to advantage also in combination with an anionic surfactant such as glyceryl stearate citrate and triceteareth-4 phosphate.

To sum up, for at least all of the reasons set forth above, FAVRE in view of CA and CTF does not render it obvious to provide a preparation as set forth in present independent claims 23 and 47.

Regarding independent claim 43 (and also dependent claim 27), it is further noted that FAVRE also fails to render it obvious to employ the combination of Pemulen TR2 and Carbopol 980 in a total amount of not more than 0.40 % by weight. In this regard, it is noted that all of the numerous exemplary compositions of FAVRE contain Pemulen TR2 and Carbopol 980 in a total concentration of at least 0.6 % by weight, i.e., 1.5 times the amount recited in present claim 43. The Examiner may argue that this has something to do with the fact that the Carbopol 980 is used as a thickener and adjusting the amount of Carbopol 980 for lower viscosities would result in a lower total amount of Pemulen TR2 and Carbopol 980 than that in the Examples of FAVRE.

However, Example 8 of FAVRE shows that if no Carbopol 980 is employed, the amount of Pemulen TR2 is drastically increased from 0.1 % by weight used in all of the remaining Examples of FAVRE to 0.6 % by weight in Example 8, thereby again resulting in a total amount of Pemulen TR2 and Carbopol 980 of 0.6 % by weight. This is a clear indication to one of ordinary skill in the art that irrespective of the desired viscosity of the composition, the total amount of Pemulen TR2 and Carbopol 980 in the compositions of FAVRE should be at least 0.6 % by weight, thereby teaching away from the preparation of present claims 43 and 27.

Applicants submit that for at least all of the foregoing reasons, the present rejections under 35 U.S.C. § 103(a) over FAVRE in view of CA and CTF are without merit, wherefore withdrawal thereof is respectfully requested.

CONCLUSION

In view of the foregoing, it is believed that all of the claims in this application are in condition for allowance, which action is respectfully requested. If any issues yet remain which can be resolved by a telephone conference, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

Respectfully submitted,
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